

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KINGSTON ASIMIGA,

Plaintiff,

-against-

ASHLEY SIMELA MD, CHARBEL ISHAK
MD, CHRISTINA NICOLEAU MD and
BRONX-LEBANON HOSPITAL CENTER,

Defendants.

Case No. 22 CV 9893 (JPC)

ORDER OF REMAND

WHEREAS, on or about November 7, 2017, Plaintiff Kingston Asimiga (“Plaintiff”) brought a medical malpractice action against defendants Bronx-Lebanon Hospital Center, Ashley Simela (“Simela”), Charbel Ishak, and Christine Nicoleau (together, the “Defendants”), in the Supreme Court of the State of New York, County of Bronx, Index No. 30580/2017E (the “State Action”).

WHEREAS, on or about November 22, 2022, the United States removed the State Action to the District Court for the Southern District of New York due to Simela being deemed an employee of the United States Public Health Service pursuant to 42 U.S.C. § 233(a), (g)-(h) and 28 U.S.C. § 2679(d)(2).

WHEREAS, Plaintiff’s claims against Simela in the State Action had been discontinued prior to removal, on March 2, 2021, and thus at the time of removal there were no pending claims against a federal employee acting within his or her scope of employment.

WHEREAS, removal of this action pursuant to 42 U.S.C. § 233(a) and 28 U.S.C. § 2679(d)(2) was improper.

NOW, THEREFORE, IT IS HEREBY ORDERED that this case be remanded to to the Supreme Court of the State of New York, County of Bronx, pursuant to 28 U.S.C. § 1447(c).

Date: December 12, 2022
New York, New York

By: 
JOHN P. CRONAN
U.S.D.J.